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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/399,318 09/20/99 VAN OORT

G F-7739-CIP

MEDTRONIC INC  
700 CENTRAL AVENUE NE  
MINNEAPOLIS MN 55432

QM22/0328

EXAMINER
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SCHAETZLE, K

ART UNIT	PAPER NUMBER
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3762

DATE MAILED:

4  
03/28/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/399,318

Applicant(s)

VAN OORT ET AL.

Examiner

Schaetzle Kennedy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 September 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-34 is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6,029,087. Although the conflicting claims are not identical, they are not patentably distinct from each other because the inclusion of monitoring means for determining and detecting whether each classified signal corresponds to a predetermined heart condition (claim 1), would have been considered obvious by those of ordinary skill in the pacemaker arts. If one is to go through the trouble of classifying each signal, then it is axiomatic that one would utilize this result to determine the corresponding heart condition such a classification is indicative of in order to accurately control the pulse means of the pacemaker and effect proper treatment. Furthermore, the use of a triggering means for triggering a predetermined response (claim 15) and having it connected to the means for delivering the predetermined response (claim 16), is old, well-known, and obvious in the pacing arts. It is well-known, for example, to trigger a pacer pulse generator to issue a predetermined stimulation pulse, and of course, to have such a trigger connected to the delivery means --a fundamental pacer operation. Furthermore, those of ordinary skill in the art would have

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recognized the applicability of a wide variety of available and well-known therapy delivery means to the invention (claim 17). The particular type of therapy applied would have been considered a patient dependent design parameter based upon the patient's condition and likelihood for successful reversion and treatment. Likewise, the particular type of condition monitored and detected and concomitantly, the type of wave detected (claim 18) would have been seen as an obvious application dependent parameter. Any condition known to be treatable via a pacing system would have been considered in the application of the invention. Regarding the classification of signals on the basis of waveform parameters (claims 19 and 20), analysis of waveform morphology is an old and well-known technique used to classify cardiac signals.

#### *Allowable Subject Matter*

3. Claims 1-20 would be allowable upon submission of an acceptable terminal disclaimer.
4. Claims 21-34 are allowed.

Regarding claim 21, the prior art of record fails to set forth a method of using a pacing system with the recited parameter means for processing the filtered signals and the slope signals during the recited analysis window so as to enact the recited processing step.

#### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Schaetzle whose telephone number is (703) 308-2211. The examiner can normally be reached on Mondays through Fridays from 9:30 to 6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached at (703)308-5181. The fax phone number for the organization where this application or

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proceeding is assigned is (703) 305-3590. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
KENNEDY SCHAETZLE  
PRIMARY EXAMINER

March 22, 2001